

WASHINGTON STATE  
EXECUTIVE ETHICS BOARD  
2425 Bristol Court SW – 1<sup>st</sup> Floor Conference Room 148 – Olympia, WA

November 17, 2006  
Regular Meeting Minutes

**A. Preliminary Business**

**1. Roll Call**

The regular meeting of the Washington State Executive Ethics Board (EEB) was called to order by Chair Trish Akana at 9:00 a.m. In attendance were Vice Chair Evelyn Yenson and Members Judy Golberg, Neil Gorrell and Kyle Usrey. Board staff in attendance included: Executive Director Susan Harris, Senior Assistant Attorney General Nancy Krier, Assistant Attorney General Michael Tribble, Administrative Officer Ruthann Bryant and Investigators Sue Jones and Nancy Lewin.

**2. Approval of Agenda**

**Motion 07-024** Moved by Member Gorrell, seconded by Vice Chair Yenson:

**The Board approves the November 17, 2006 agenda as presented.**

The motion passed unanimously.

**3. Approval of October 13 Meeting Minutes**

Chair Akana requested that a sentence be added to reflect that Mr. Pope would be notified in writing regarding the withdrawal of his complaint. She also noted that the Advisory Opinion request should reflect the Board statements expressed in the advisory letter to the Washington State Parks and Recreation Commission.

**Motion 07-025** Moved by Vice Chair Yenson, seconded by Member Usrey:

**The Board approves the October 13, 2006 minutes as amended.**

The motion passed unanimously.

## **B. Enforcement Matters**

### **1. EEB Case 03-115 Larry Brookes**

Administrative Law Judge Cindy Burdue presided over the enforcement hearing of Larry Brookes, EEB Case No. 03-115, for alleged violations of RCW 42.52.070 and RCW 42.52.160 when he used his position to secure special privileges and used state resources for personal benefit.

Judge Burdue introduced Board staff Assistant Attorney General Mike Tribble and Attorney Gary Lofland, representing Mr Brookes. She also introduced Board members and staff and briefly discussed the enforcement hearing process. Member Gorrell noted that he is an Administrative Law Judge with the Office of Administrative Hearings, that the office has a screening process in place and he has been excluded from all matters regarding this issue.

Mike Tribble summarized the case against Larry Brookes in his opening statement and called Mr. Brookes to testify. Mr. Brookes is the Automotive Department Program Manager at Yakima Valley Community College. He stated that he was not the instructor for the students working on his RV, but did acknowledge that he provided some teaching and demonstration on the vehicle when asked.

Mr. Lofland also made an opening statement and called John Mason to testify via telephone. Mr. Mason is an instructor for Yakima Valley Tech and solicited Mr. Brookes' RV for advanced summer student work. He stated that Mr. Brookes was in the shop working on curriculum development and was available for questions from the students.

Mr. Lofland also called Brady Brookes to testify. Ms. Brookes stated that she had keys to the College that unlocked offices around campus.

Following closing argument, Judge Burdue concluded the hearing at 11:45 a.m.

### **2. EEB Case 04-017 Arthur Hayward**

The Board also considered a complaint against Arthur Hayward, EEB Case 04-017, for alleged violations of RCW 42.52 when he (1) authorized purchases that were beyond the authority of a Vocational Rehabilitation Counselor (VRC); (2) authorized on-the-job-training (OJT) for three DVR clients through a business in which he was a co-owner; (3) authorized car repair expenses on a vehicle allegedly owned by a DVR client, when he was the registered owner of the vehicle; and (4) authorized car repair expenses on a vehicle allegedly owned by a DVR client, when actually the vehicle was registered to an individual who resided with the respondent, and who was not a DVR client.

At 12:00 the Board went into deliberation and working lunch until 12:30 p.m.

### **C. Rule-Making – Public Hearing and Possible Adoption**

Chair Akana presided over the rule making hearing.

Susan Harris presented the proposed rule amendments scheduled for public hearing:

1. WAC 292-100-007 Definitions. The amendment adds definitions to give direction to people affected by the enactment of RCW 42.52.560.

Ms. Harris summarized two written comments received from stakeholders. Gladys Burbank representing the Washington State Federation of State Employees, testified that “direct and indirect” should be clarified.

Following discussion, the Board agreed that clear examples and/or definitions of “direct and indirect” should be included in the rule. They directed staff conduct further research on the issue and the public hearing will be held at a future meeting.

2. WAC 292-100-045 Executive director's dismissal. The title has been amended to “Dismissal of complaints.” The amendment is necessary because of statutory change which now include the authority of the Board to issue dismissals.

No one signed up to testify.

3. WAC 292-100-050 Determination on reasonable cause. The changes are not substantive, but are made for ease of reading.

No one signed up to testify.

4. WAC 292-100-150 Discovery—Production of documents and use at hearing. This amendment allows staff time to copy materials to be included in the Board mailing packet so that Members have adequate time to review prior to the hearing. It also allows the parties the opportunity to provide additional materials at the hearing, if necessary.

No one signed up to testify.

5. WAC 292-100-160 Conduct of hearings. The changes clarify the role of the administrative law judge when sitting with the board or sitting alone.

No one signed up to testify.

If approved, the rules become effective 31 days after filing the appropriate form with the Code Reviser.

**Motion 07-026** Moved by Member Gorrell, seconded by Member Golberg:

**The Board adopts as presented amendments to WAC 292-100-045 Executive director's dismissal, WAC 292-100-050 Determination on reasonable cause, WAC 292-100-150 Discovery—Production of documents and use at hearing and WAC 292-100-160 conduct of hearings.**

**The Board continues the public hearing of amendments to WAC 292-100-007 Definitions pending further research.**

The motion passed unanimously.

#### **D. Election of Officers**

**Motion 07-027** Moved by Member Golberg, seconded by Member Gorrell:

**The Board elects Evelyn Yenson as Chair of the Executive Ethics Board, effective January 1, 2007.**

The motion passed unanimously.

**Motion 07-028** Moved by Member Gorrell, seconded by Chair Akana:

**The Board elects Judy Golberg as Vice Chair of the Executive Ethics Board, effective January 1, 2007.**

The motion passed unanimously.

#### **E. Public Comment/Board Member Comments**

No public or Board Member comments were expressed.

#### **F. Staff Reports**

##### **1. Executive Director's Report**

Susan Harris briefly discussed the budget and introduced part-time Office Assistant Kandi Lee. She also provided an update on the Strategic Plan highlighting progress made in the first quarter.

Ms. Harris also discussed a draft of an informal advisory letter to the Joint Legislative Audit and Review Committee regarding their request for a review of a policy dealing with members of the Citizen Commission for Performance Review of Tax Preferences who may find themselves in a conflict of interest situation. Because of the Commission's duties, Ms. Harris believes that when a Commissioner has a financial interest in an entity that is to be scheduled for review, the Commissioner may disclose the interest and continue to act on the scheduled matter without violating the Ethics in Public Service Act.

She also briefly reported on training conducted by staff.

## **2. Other Staff Reports**

Terry Springer previewed the new website design, highlighting some of the new functions that will be available.

## **G. Advisory Opinion Requests**

### **1. Washington State Patrol Fire Training Academy – may employees who live a fair distance from their work site stay overnight in the work facility without cost?**

Susan Harris updated the Board on a request for an advisory opinion on whether Washington State Patrol (WSP) employees can use facilities of the WSP Fire Training Academy in North Bend to stay overnight and avoid a long commute home. She noted that this item was discussed at the two previous meetings and further information was requested. Ms. Harris added an advisory opinion has been drafted however, staff recently learned of a potential collective bargaining issue.

Washington Federation of State Employees Attorney Anita Hunter, Diane Lutz with the Governor's Labor Relations and Union Representative Herman Gilman addressed the Board with their concerns with the draft opinion.

Staff suggested that the Board table the matter to allow staff to conduct further research. The Board agreed.

## **H. Executive or Closed Session**

At 2:15 p.m. the Board moved into Executive Session to discuss the performance of a public employee. The Board returned to open session at 2:40 p.m.

## **I. Advisory Opinion Requests (cont.)**

### **1. Washington State Parks and Recreation Commission – Private Business in State Housing**

Susan Harris updated the Board on a request for an advisory opinion on whether it is permissible to allow state employees who reside in Parks housing to conduct an outside business in the residence. The request was heard at the October 13<sup>th</sup> meeting and staff was directed to draft a letter expressing that the law and rules are very clear: state resources may not be used for private benefit.

The Board requested that staff remove the sentence regarding a bright line.

**Motion 07-029** Moved by Member Usrey, seconded by Member Gorrell:

**The Board approved the draft letter to Deputy Judy Johnson at Washington State Parks and Recreation Commission as amended.**

Voting For: Members Usrey, Gorrell, Golberg and Chair Akana.

Not Voting: Vice Chair Yenson.

The motion passed.

**2. Can graduate students from the University of Washington keep vouchers received from an airline for volunteering to be “bumped” from an overbooked flight while on official business?**

Ms. Harris also provided an update on a request for an advisory opinion on whether employees may keep vouchers for free flights when, while traveling on state business, they were voluntarily “bumped” from their original flight. This issue was also discussed at the October 13<sup>th</sup> meeting and a draft letter was requested by the Board.

Member Gorrell requested that the word “your” in paragraph one be changed to University of Washington.

**Motion 07-030** Moved by Member Gorrell, seconded by Member Usrey:

**The Board approved the draft letter to Mark Stoelinga at the University of Washington as amended.**

The motion passed unanimously.

Chair Akana noted that in the future, Board letters can be approved by the Chair.

**J. Executive or Closed Session**

At 2:50 p.m. the Board moved into Closed Session to discuss potential litigation, deliberate and to receive and evaluate complaints against state employees and officers. The Board returned to open session at 3:20 p.m.

**K. Miscellaneous Matters/Adjournment**

There being no miscellaneous matters, the meeting was adjourned at 3:21 p.m.

Approved by the Board 1/12/07